UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re:

Mohamad A. Dabaja,

Debtor.

CASE NUMBER 12-67940
CHAPTER 7
HONORABLE MARK A. RANDON

_____/

K. Jin Lim, Trustee,

Plaintiff,

ADVERSARY PROCEEDING
CASE NUMBER 13-04727

v.

Champion Products,

Defendant.

_____/

ORDER DENYING THE TRUSTEE'S MOTION FOR SUMMARY JUDGMENT[1]

I. INTRODUCTION

Debtor Mohamad Dabaja was the sole owner of Amani's Restaurant ("the Restaurant") in Dearborn, Michigan. Ten months before he filed for individual Chapter 7 bankruptcy protection, Dabaja sold the Restaurant and used $3,000.00 of the sale proceeds to pay down the Restaurant's outstanding debt to one of its suppliers, Defendant Champion Products. Plaintiff K. Jin Lim, the

[1]The Court enters a final order on the Trustee's motion. The parties expressly consented to this exercise of authority in their Report of Parties Rule 26(f) Conference, and the United States Supreme Court's decision in *Exec. Benefits Ins. Agency v. Arkison*, 134 S.Ct. 2165, 2014 WL 2560461 (June 9, 2014) did not address the issue of whether a party is nevertheless constitutionally entitled to an Article III court's review of its fraudulent conveyance claim. Further, this matter is distinguishable from *Waldman v. Stone*, 698 F.3d 910 (6th Cir. 2012): the claims presented do not arise under state law, nor would they be actionable outside of the Bankruptcy Code. However, should any reviewing court disagree, this final order may be treated as findings of fact and conclusions of law, subject to de novo review.

Trustee for Dabaja's bankruptcy estate, brought this adversary proceeding to avoid Dabaja's payment to Champion as a constructively fraudulent transfer under 11 U.S.C. § 548(a)(1)(B).

The Trustee's motion for summary judgment is pending; it has been fully briefed. The Court heard argument on June 23, 2014. Because a genuine issue of material fact exists as to whether Dabaja remained personally liable for the Restaurant's outstanding debts after the sale, the Trustee's motion is **DENIED.**

II. BACKGROUND

Champion supplied various goods and services, on credit, to the Restaurant. On February 27, 2012, Dabaja sold the Restaurant's equipment and goodwill to Rabih Dabaje and Rushdi Zaiter ("Buyers") for $140,000.00; the sale was consummated through a Bill of Sale, which – steeped in legalese – failed to clearly specify which party was obligated to pay the Restaurant's outstanding debts:

> Known by all men by these presents, that [] Dabaja[,] owner of . . . Amani's[,] [the Restaurant] . . . party of the first part, for and in consideration of the sum of [$140,000.00] only . . . paid by [Buyers,] . . . the new owners of Amani's [the Restaurant] []. A Michigan Corporation, party of the second part, the receipt of whereof is hereby acknowledged as bargained and sold, and does by these presents grant and convey unto said party of the second part, its heirs, personal representatives or assigns, all of the equipment, air compressor, sign outside, credit card machine, computer, table saw, phone, display, furniture and fixtures, same phone number [], security deposit returned to owner, *not to assume any liability*, and utility to be transferred.

(Emphasis added).

Dabaja deposited the sale proceeds into a checking account held jointly with his wife.[2] He then wrote a series of checks from the account – including Check No. 106 to Champion for $3,000.00 – to pay the Restaurant's outstanding debts.[3] More than nine months later, Dabaja filed this voluntary Chapter 7 bankruptcy petition.

III. STANDARD OF REVIEW

Under Rule 56 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, summary judgment must be granted "if the movant shows that there are no genuine issues as to any material fact in dispute and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Care To Live v. Food & Drug Admin.*, 631 F.3d 336, 340 (6th Cir. 2011). The standard for determining whether summary judgment is appropriate is whether "the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Pittman v. Cuyahoga County Dep't of Children Servs.*, 640 F.3d 716, 723 (6th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)). The Court must draw all justifiable inferences in favor of the party opposing the motion. *Pluck v. BP Oil Pipeline Co.*, 640 F.3d 671, 676 (6th Cir. 2011). However, the nonmoving party may not rely on

[2]Champion's papers assert the possibility that – because the check was drawn on Dabaja and his wife's joint bank account – the funds used to pay Champion belonged, in part, to Dabaja's wife. However, only proceeds from the sale of the Restaurant – owned solely by Dabaja – were used to pay Champion.

[3]*See e.g.*, Complaint, Lim v. Salam Food Ctr. (*In re* Dabaja), Ch. 7 Case No. 12-67940, Adv. No. 13-04633 (E.D. Mich. June 3, 2013) (where the Complaint alleges Dabaja wrote Check No. 103 from the same account on March 6, 2012 to pay a creditor of the Restaurant); Complaint, Lim v. Dearborn Produce Wholesale (*In re* Dabaja), Ch. 7 Case No. 12-67940, Adv. No. 13-04632 (E.D. Mich. June 3, 2013) (where the Complaint alleges Dabaja wrote Check No. 104 from the same account on March 6, 2012 to pay a creditor of the Restaurant); Complaint, Lim v. Farid M. Saad Co. (*In re* Dabaja), Ch. 7 Case No. 12-67940, Adv. No. 13-04634 (E.D. Mich. June 3, 2013) (where the Complaint alleges Dabaja wrote Check No. 105 from the same account to pay a creditor of the Restaurant).

mere allegations or denials, but must "cit[e] to particular parts of materials in the record" as establishing that one or more material facts are "genuinely disputed." Rule 56(c)(1). A mere scintilla of evidence is insufficient; there must be evidence on which a jury could reasonably find for the non-movant. *Hirsch v. CSX Transp., Inc.*, 656 F.3d 359, 362 (6th Cir. 2011).

IV. ANALYSIS

11 U.S.C. § 548(a)(1)(B) allows the Trustee to avoid – as a constructively fraudulent transfer – the $3,000.00 funds transferred to Champion, if four conditions are met:

1. Dabaja transferred his assets to Champion;
2. The transfer occurred within two years before Dabaja filed bankruptcy;
3. Dabaja received less than a reasonably equivalent value in exchange for the transfer; and,
4. Dabaja was insolvent when the transfer was made.

Only the third and fourth conditions are in dispute.

A. A Genuine Issue of Material Fact Exists as to Whether Dabaja Received Reasonably Equivalent Value

Regarding the third condition, the Court must determine whether: (1) Dabaja received "value"; and, (2) that value was reasonably equivalent to the value of the transferred assets. 11 U.S.C. § 548(a)(1)(B); *In re Morris*, 2013 WL 5705630, at *10 (Bkrtcy. N.D. Ohio Oct. 18, 2013). The bankruptcy code defines "value" as "property, or satisfaction or securing of a present or antecedent debt of *the debtor*, but does not include an unperformed promise to furnish support to the debtor[.]" 11 U.S.C. § 548(d)(2) (emphasis added).

Here, the reasonably equivalent value was the product Champion supplied to the Restaurant while Dabaja was still the owner. But Champion's product can only be considered

reasonably equivalent value for Dabaja's $3,000.00 payment if Dabaja retained a personal obligation to pay the Restaurant's outstanding debts after he sold it (i.e., that it was still a "debt of the debtor"). *See e.g., In re Walters*, 163 B.R. 575, 581 (Bkrtcy. C.D. Cal. 1994) (reasonably equivalent value found where debtor was personally liable on debts pursuant to a Guaranty and debtor's payments resulted in a dollar-for-dollar reduction in debtor's liability under the Guaranty); *In re Toy King Distributors, Inc.*, 256 B.R. 1, 138 (Bkrtcy. M.D. Fla. 2000) (finding debtor did not receive reasonably equivalent value for paying fees that he had no obligation to pay).

The Trustee argues that she is entitled to summary judgment, because Champion has no evidence to show that Dabaja was personally obligated on the business account between Champion and the Restaurant and, thus, would have had no personal obligation to pay the Restaurant's debts post-sale. However, the Bill of Sale is ambiguous as to *which party* was "not to assume any liability." One plausible reading suggests that, despite the sale, Dabaja retained the obligation to pay the Restaurant's outstanding debts. Importantly, Dabaja appeared to act in conformity with this interpretation of the Bill of Sale: his $3,000.00 payment to Champion was one in a series of sequential checks made out to the Restaurant's creditors.

The objective of contract interpretation is to read the document as a whole and apply the plain language to honor the intent of the parties. *Dobbelaere v. Auto-Owners Ins. Co.*, 740 N.W. 2d 503, 505 (2007). "Contracts must be construed so as to give effect to every word or phrase as far as practicable," *Klapp v. United Ins. Group Agency, Inc.*, 663 N.W.2d 447, 453 (2003), and terms used in a contract must be read in context, *Vushaj v. Farm Bureau Gen. Ins. Co. of Mich*., 773 N.W.2d 758, 760 (2009). If the contractual language is clear and unambiguous, it must be interpreted and enforced as written. *Frankenmuth Mut. Ins. Co. v. Masters*, 595 N.W.2d 832, 836

(1999). A contract is ambiguous "when its provisions are capable of conflicting interpretations." *Klapp*, 663 N.W.2d at 467.

Here, the parties' contract is ambiguous. The Bill of Sale's "not to assume any liability" language is unclear as to which party – Dabaja or the Buyers – was to assume the Restaurant's outstanding debts. The context of the remainder of the Bill of Sale does not clarify the issue, and neither party addresses this language in their briefs. Yet understanding the parties' intent – in the face of this ambiguous contact language – is critical: if Dabaja sold the Restaurant's equipment and goodwill, but retained the obligation to pay its outstanding debts, then he may well have received reasonably equivalent value in exchange for the $3,000.00 payment.

Therefore, a material question remains: whether Dabaja or the Buyers were to assume liability for the Restaurant's outstanding debts.

B. There is no Question that Dabaja was Insolvent When he Wrote the Check to Champion

Champion disputes that Dabaja was insolvent on the date he wrote the check. Insolvency, as it applies to an individual such as Dabaja, is defined in the Bankruptcy Code as follows:

> financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of [] (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and (ii) property that may be exempted from property of the estate under section 522 of this title[.]

11 U.S.C. § 101(32). The Trustee directs the Court to Dabaja's schedules as proof that his debts exceeded his liabilities. Champion did not present any evidence – affidavits or otherwise – to

rebut the Trustee's showing. Accordingly, there is no question that Dabaja was insolvent when he wrote the check to Champion. Fed. R. Civ. P. 56(c)(1).

V. CONCLUSION

Because a genuine issue of material fact exists as to whether Dabaja remained personally liable for the Restaurant's debts after the sale, the Trustee's motion is **DENIED.**

.

Signed on June 25, 2014

/s/ Mark A. Randon
Mark A. Randon
United States Bankruptcy Judge